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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 28A–43A) is reported at 270 F. Supp. 236. The opinion of the court of appeals (R. 47A–59A) is reported at 398 F. 2d 672.

JURISDICTION

The judgment of the court of appeals was entered on July 10, 1968 (R. 60A). The notice of appeal was filed on July 30, 1968, and the jurisdictional statement was filed on October 7, 1968 (R. 3A, 4A). Probable jurisdiction was noted on January 13, 1969 (R. 61A). The jurisdiction of this Court rests on 28 U.S.C. 1254(2).

QUESTION PRESENTED

Whether Section 514 of the Soldiers' and Sailors' Civil Relief Act prohibits the imposition of Connecticut sales and use taxes on the purchase or use of personal property in the State by servicemen on active duty who are resident and domiciled in States other than Connecticut and absent from such States solely pursuant to military orders.

STATUTE INVOLVED

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

> SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769, 777; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P.L. 87-771, 76 Stat. 768]:
>
> (1) For the purposes of taxation in respect of any person, or of his personal property, income or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territ ry, possession, or political subdivision of any of the foregoing, or in District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason

of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided,* That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

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(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

(50 U.S.C. App. 574.)

The Connecticut Education, Welfare and Public Health Tax Act, Conn. Gen. Stat. (Rev. 1958), c. 219, Secs. 12–406 through 12–432a, are reproduced in the Appendix to appellants' brief at pp. 2B–43B.

STATEMENT

This is an appeal from the decision of the Court of Appeals for the Second Circuit (R. 47A–59A), which affirmed the judgment of the District Court for the District of Connecticut (R. 44A) that Section 514 of the Soldiers' and Sailors' Civil Relief Act,[1] forbids application of the Connecticut sales and use tax statute[2] to servicemen on active duty who reside and are domiciled in States other than Connecticut and who are absent from such States solely pursuant to military orders.

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[1] Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178, as added by Section 17 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769, 777, as amended (50 U.S.C. App. 574).

[2] The Connecticut Education, Welfare, and Public Health Act, as amended, II General Statutes of Connecticut, 1958, Sections 12–406 through 12–432a.

The United States instituted this action against the appropriate Connecticut officials because of its interest, as sovereign, in insuring the enforcement of the protections which Congress provided members of the armed forces in the Soldiers' and Sailors' Civil Relief Act. See *United States* v. *Arlington County, Commonwealth of Virginia*, 326 F. 2d 929, 931–933 (C.A. 4). Lieutenant Stanley D. Schuman joined in the action as a plaintiff on his own behalf and as a representative of the class of members of the armed forces present on active military service, but not resident or domiciled, in the State of Connecticut. The district court dismissed Lieutenant Schuman's claim on the grounds that the taxes assessed against him did not involve the requisite jurisdictional amount and he had not brought a true class action (R. 41A–43A); no appeal was taken (R. 48A, n. 1). By agreement, appellants continue to collect the taxes from the class of nonresident servicemen in question pending appeal. These taxes will be refunded if the judgment of the district court is ultimately sustained. (R. 48A, n. 2.)

The taxes in question are those imposed on the purchase or use for nonbusiness purposes of personal property in Connecticut. None of the facts are in dispute. Most servicemen's day-to-day purchases in Connecticut of tangible personal property, such as food, clothing, toilet articles and other personal items, are made at military exchanges and commissaries operated by the armed services on military installations (R. 16A), and are not subject to Connecticut tax (4 U.S.C. 107(a)).

The applications of the Connecticut statute are illustrated by several examples set forth at trial. Lieutenant Stanley D. Schuman of Nebraska and Commander Kent J. Carroll of Michigan both purchased used motor boats in Connecticut from nondealers. The Connecticut Tax Commissioner assessed a tax of $21 and interest of $.53 against Schuman; he paid the tax under protest. Carroll refused a demand that he pay a tax of $171.50; the Tax Commissioner threatens to assess and collect the tax. Commander Clyde H. Schaffer of Pennsylvania purchased a new car from a Connecticut dealer who collected the sales tax of $61.08. (R. 14A–16A.)

In August 1966 Commander Jerome W. Roloff of Wisconsin bought a used car in Florida, where he was then stationed, and paid a sales tax of $36.50 there. When he subsequently was transferred to Connecticut, and registered his car there, he was required to pay the difference of $27.38 between the Florida sales tax and the Connecticut use tax. (R. 17A–20A.)

Commander William L. Foster of Texas purchased a new car from a Connecticut dealer. Although at the same time Commander Foster registered it in Texas, paying a Texas sales tax of $35.92 as a prerequisite to registration, the dealer collected the full Connecticut use tax of $62.85, after the Legal Department of the Connecticut State Department of Motor Vehicles advised Commander Foster that he had to pay the Connecticut use tax without any credit for the Texas tax. (R. 21A–27A.)

The district court held that Section 514 of the Soldiers' and Sailors' Civil Relief Act bars the collection of Connecticut sales and use taxes from any serviceman who is a resident and domiciliary of another State (R. 44A). The Court of Appeals for the Second Circuit unanimously affirmed (R. 60A), and this Court, on January 13, 1969, noted probable jurisdiction of Connecticut's appeal.

PART ONE: ARGUMENT IN SUPPORT OF THE JUDGMENT BELOW

INTRODUCTION AND SUMMARY OF ARGUMENT

The Soldiers' and Sailors' Civil Relief Act of 1940 was adopted to promote and strengthen the national defense by suspending enforcement of certain civil liabilities for persons serving in the armed forces. One of the primary functions of the statute is to relieve military personnel of potential multiple State taxes relating to their income and personal property which might accrue because orders require their presence in States other than that of their residence or domicile.

This tax exemption is implemented by Section 514 of the Act,[3] which defines the residence of servicemen,

[3] As originally enacted, the Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178, contained no cognate of Section 514. That section was added by Section 17 of the Soldiers and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769, 777. However, the 1942 Act added only the rules that no residence or domicile was to be gained or lost due to military service and that compensation for military service would not constitute income earned within the State in which the non-resident serviceman was stationed. Subsequent to the enactment of the 1942 Act, questions were raised regarding the effect of Section 514 upon personal property taxes; clarifying

the source of their income, and the situs of their property for the purpose of exempting them from certain forms of taxation by the States in which they are stationed. The exemption is granted by a statutory mechanism (Section 514(1)) which provides that a serviceman "shall not be deemed to have lost a residence or domicile in any State * * * solely by reason of being absent therefrom in compliance with military * * * orders" and that he shall not be deemed "to have acquired a residence or domicile in * * * any other State * * * solely by reason of being, so absent."

Section 514(1) then goes on to spell out two tax consequences of this statutory definition of a serviceman's residence. For the purposes of income taxation by a State or its subdivision, "compensation for military * * * service shall not be deemed income * * * from sources within" any State "of which such person is not a resident." For the purposes of taxation "with respect to personal property, or the use thereof," personal property "shall not be deemed * * * to have a situs for taxation" in any such State. The effect of the latter part of the statute is to prohibit such a State from imposing "taxation in respect of * * * personal property" which is based either upon the location, presence, or situs of personal property in the taxing jurisdiction.

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legislation was proposed in 1944. H.R. 4733, 78th Cong., 2d Sess. To resolve these doubts, Congress, by the Act of July 3, 1944, c. 397, 58 Stat. 722, added to Section 514 the rule that personal property was not to be deemed to have a situs for taxation in the State in which a non-resident serviceman was stationed. See H. Rep. No. 1514, 78th Cong., 2d Sess., pp. 1–2, and S. Rep. No. 959, 78th Cong., 2d Sess., pp. 1–5.

The issue presented by this case is whether Section 514 forbids the imposition of Connecticut sales and use taxes upon servicemen who are in that State solely by reason of military orders. Like many States, Connecticut has an integrated sales and use tax. It requires the payment of a 3½ percent tax on most retail sales of tangible personal property, and a use tax is imposed at the same rate on the "storage, use or other consumption" in Connecticut of tangible personal property purchased from a retailer for such purposes. The legal incidence of these taxes falls on the consumer, since the retailer, who pays the tax to the State, is required in turn to collect the tax from the customer. Conn. Gen. Stat. Section 12–408 (1), (2), and (4) (App. Br. 9B–11B).[4] Any user is directly liable for the tax, unless the property was acquired from a Connecticut retailer who collected the tax. Section 12–411 (1) through (3). (App. Br. 14B–15B). See, generally, *Stetson* v. *Sullivan,* 152 Conn. 649, 211 A. 2d 685.

Appellants and the *amici curiae* who support them advance two statutory arguments in support of their position that Section 514 is too narrow to forbid such

[4] Appellants' contention that the Connecticut sales tax falls on the seller, *i.e.*, that it is a vendor rather than a vendee tax (Br. 10), is directly contrary to *Avco Mfg. Corp.* v. *Connelly,* 145 Conn. 161, 140 A. 2d 479, and *Agricultural Bank* v. *Tax Commission,* 392 U.S. 339, 346–348. Therefore, there is no occasion, in the context of this case, for this Court to decide, as California and Illinois urge in their *amicus* brief (pp. 9–13), what effect Section 514 might have on sales taxes whose incidence is on the vendor.

State sales and use taxes. The first contention is that the phrase "taxation in respect of * * * personal property"—which of course defines the scope of Section 514 for present purposes—encompasses only ad valorem taxes and fails to reach sales and use taxes. Their second claim is that the mechanism of the statute—the provision that the out-of-State serviceman's property is deemed to be without a situs for taxation in Connecticut—is insufficient to bar a sales tax because, they assert, this levy is imposed on the sales transaction without regard to the presence of the property in Connecticut.

In this brief we shall review the language of the statute, the underlying Congressional purposes, and the construction which this Court has accorded it. Each of these considerations, we submit, demonstrates that the district court and the court of appeals correctly decided this case.

Connecticut's sales and use taxes easily fit within Section 514, which forbids "taxation in respect of * * * personal property." As the court of appeals observed (R. 52A), the statutory phrase has "a generous reach." It indicates that Congress intended to include all taxes which pertain or relate to personal property, such as the sales and use taxes in question.

Significantly, the statute contains three explicit references to "use" taxes, and one to "excises". These appear in contexts which strongly suggest that Congress intended that the statute encompass "excises", *i.e.*, sales taxes, and taxes imposed on the "use" of personal property.

Connecticut's statute taxes only transactions where the buyer uses or takes possession of the property within Connecticut. Because Section 514 deems the serviceman's possession to be in his home State, the mechanism of Section 514 necessarily bars the Connecticut tax.

To hold otherwise would be contrary to the purposes expressed in the legislative history and decisions of this Court. The reference in Section 514 to "taxation in respect of * * * personal property" would have diminished practical impact if it were restricted to ad valorem taxes. And, as this record shows, the relief Congress sought to provide from the threat of double taxation would be effectively vitiated in an important area of taxation, if the decision below is reversed. Congress, moreover, on each of the two occasions when the precise limits of the provision were questioned, amended Section 514 in a manner which emphasized its wide scope, and there is ample evidence of a Congressional desire to have any doubts resolved in favor of granting the nonresident servicemen immunity to taxation in jurisdictions where his military orders have taken him.

This Court, too, has insisted that the Act must be read "with an eye friendly to those who dropped their affairs to answer their country's call." *LeMaistre* v. *Leffers,* 333 U.S. 1, 6. Most recently, in *California* v. *Buzard,* 382 U.S. 386, 393, this Court

stated that "The very purpose of § 514 * * * was to relieve * * * [the serviceman] of the burden of supporting the governments of the States where he was present solely in compliance with military orders." There the Court ruled that the Act exempted a nonresident from an annual California tax of 2 percent on the value of an automobile brought into the State from without. The rationale of that decision requires that Section 514 be viewed as relieving servicemen from the Connecticut sales and use tax since those taxes also serve to defray the general expenses of local government.

The assertions of appellants and two of the *amici curiae* that it would be difficult to administer an exemption from sales tax are not germane to the question of statutory construction presented here. At all events, there is no reason to believe that the administration of the exemption from sales and use taxes accorded by Section 514 would create any more difficulties than presently exist in administering the multitude of exemptions granted by all sales and use tax statutes. The procedures now used by the States for identifying those entitled to exemption under such laws are indeed well suited to application to the identification cards that the Department of Defense, as a matter of course, issues servicemen.

ARGUMENT

SECTION 514 OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT PRECLUDES THE APPLICATION OF CONNECTICUT SALES AND USE TAXES TO SERVICEMEN WHO ARE THERE SOLELY BY REASON OF MILITARY ORDERS

I. THE WORDING OF SECTION 514 IS NOT RESTRICTED TO AD VALOREM TAXES BUT ENCOMPASSES ANY TAX MEASURED BY THE VALUE OF PERSONAL PROPERTY

1. Section 514 of the Soldiers' and Sailors' Civil Relief Act provides that "[f]or the purposes of taxation in respect of the personal property" of a serviceman by a State in which he is neither resident or domiciled, his "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State." The consequence of this provision is to forbid a State or its subdivisions to impose a tax "in respect of" the serviceman's personal property, if the incidence of the tax is based on the location, presence, or situs of personal property in the taxing jurisdiction.

The initial problem concerns the scope of the statutory phrase "in respect of * * * personal property." This phase, we would agree, has no single, accepted meaning. But this does not imply that the import of the phrase as used in Section 514 is doubtful or uncertain. On the contrary, the very imprecision of the phrase demonstrates that Congress did not intend to confine Section 514 to ad valorem taxation or any other single form of levy.

The usual use of a periphrasis such as "in respect of" occurs when the draftsman is unable to conceive

of a single preposition or group of prepositions that fully expresses his intent. The closest one word definition of the phrase would be "about" or "regarding" or "respecting". Cf. Fowler, *Modern English Usage*, 445-446, 512, 521 (2d ed. 1965). Thus the phrase "in respect of" has the broadest prepositional meaning, and the statutory phrase "taxation in respect of * * * personal property" has, as the court of appeals observed (R. 52A), "a generous reach".

In consequence, the phrase "taxation in respect of * * * personal property" is hardly what one would have expected Congress to use if it intended to restrict the exemption to ad valorem taxation. Rather, the use of the phrase connotes an intent on the part of Congress to exempt servicemen from all taxes pertaining to personal property, except those imposed by his home State. The exemption is to apply to any tax measured in any manner by the value of personal property whatever form the particular tax might take, so long as its incidence is upon the nonresident servicemen whose presence in the taxing jurisdiction is required by military orders.

Sales and use taxes generally, and Connecticut's in particular, plainly fit this description. It is evident from our discussion (*supra*, p. 9) that they are levied at the time of acquisition or upon the use of personal property. And both the sales and use tax are computed as a percentage of the property's value which, in the case of a sale is its sales price. These basic characteristics indicate beyond doubt that both of these taxes fall within the definition of a tax "in respect of * * * personal property."

2. The far-reaching scope of the phrase "taxation in respect of * * * personal property" is further demonstrated by other provisions of Section 514, which limit or define its application. First, in order to except business property from the exemption granted by the statute, Congress provided expressly that "nothing contained in this section shall prevent taxation by any State * * * in respect of personal property *used* in or arising from a trade or business." (Emphasis supplied.) Second, Section 514(2) provides that "the terms 'taxation' shall include but not be limited to licenses, fees or *excises* imposed in respect to motor vehicles *or the use thereof.*" (Emphasis supplied.)

In each of these clauses Congress was seeking to limit the exemption that Section 514 otherwise would have granted. In the first, Congress sought to allow taxation of property that a serviceman acquired or used to carry on a business. In the second, Congress sought to remove a serviceman's exemption from registering his automobile in his host State, unless he had registered in his home State. See *California* v. *Buzard*, 382 U.S. 386, 392.

A further indication of the breadth of Section 514 is found in language that Congress, in 1962, added to the statute to prohibit the taxation of personal property left by a nonresident serviceman in a State upon his transfer from one duty station to another.[5] Expressly recognizing that it was only clarifying, and

[5] Act of October 9, 1962, P.L. 87-771, 76 Stat. 768. See, also, *United States* v. *Arlington County, Commonwealth of Virginia*, *supra*.

was not enlarging, the scope of the statute,* Congress added the following language to Section 514:

> Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, *or the use thereof*, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders * * *. (Emphasis supplied.)

The thrice repeated reference to use taxation removes any doubt that Congress thought the phrase "taxation in respect of * * * personal property" reaches use taxes. Each of those references, to be sure, appear in the contexts where Congress was dealing with taxes that are imposed annually. It may therefore be argued, particularly as to the provisions dealing with taxes on business property and on automobiles, that the word "use" was utilized only in reference to levies, such as ad valorem taxes, that are annual, unlike the "use" taxes in issue in this case. However, the 1962 amendment dealing with property a serviceman leaves behind when he is transferred from one jurisdiction to another seems to refute such an interpretation. Although that amendment was intended to deal with ad valorem taxes, the phrase "or the use thereof" was not necessary to this purpose. Without the phrase the statutory amendment would have fully achieved the purpose of barring ad valorem taxation on property left behind in such situations.

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*S. Rep. No. 2182, 87th Cong., 2d Sess., p. 1.

The addition of the words, if it is to have any meaning, should be interpreted as an indication that Congress went beyond the narrow problem in issue there and evidenced an awareness that "use" taxes such as Connecticut seeks to impose on servicemen in this case were also barred by Section 514.

The reference to "excises" in Section 514(2) equally shows an intent to reach sales taxes, for those are synonymous with the word "excise". But even if Section 514(2) did not have this latter reference, the reference to use taxes would demonstrate an intent to forbid sales taxes as well. The two types of taxation are complementary in most jurisdictions and are designed to provide equality of taxation between property acquired in State and out of State. See *Avco Mfg. Corp.* v. *Connelly, supra; Halliburton Oil Well Co.* v. *Reily,* 373 U.S. 64, 66; *Henneford* v. *Silas Mason Co.,* 300 U.S. 577, 581–583.[7] As the district court observed (R. 36A) in language adopted by the court of appeals (R. 53A), Connecticut "has merged the purposes and imposition of the sales and use taxes to such an extent that they are but one tax in practical effect."[8] Given the essential identity between sales and

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[7] See, *e.g.*, *Comptroller of Treasury* v. *Crofton Co.*, 198 Md. 398, 84 A. 2d 86; *Niagara Junction Ry. Co.* v. *Creagh*, 2 App. Div. 299, 154 N.Y.S. 2d 229; *Herman M. Brown Co.* v. *Johnson*, 248 Iowa 1143, 82 N.W. 2d 134

[8] At least one state authority, contemporaneously with the amendment of Section 514 to deal with taxes in respect of personal property, ruled that the statute barred use taxes. Wyo. Atty. Gen. Ops., p. 1056 (1941–1947). Subsequently, that authority, as well as others, have ruled that Section 514 bars both sales and use taxes. See, 94 Ala. Atty. Gen. Q. Rep., p. 27 (1959); 122 Ala. Atty. Gen. Q. Rep., p. 28 (1966); New Jersey

use taxes, in Connecticut and generally, it is inconceivable that Congress, in enacting Section 514, would have immunized servicemen from the use taxes, but not the sales taxes, of the host State.

II.

THE DECISION BELOW PROPERLY IMPLEMENTS THE STATUTORY PURPOSE OF PREVENTING MULTIPLE TAXATION OF SERVICEMEN'S PERSONAL PROPERTY

1. The construction of the statute that is urged above and the courts below adopted is entirely consistent with the purposes of Congress, while restriction of Section 514 to ad valorem taxation would work a substantial abridgment of the benefits Congress sought to confer on servicemen absent from their home States pursuant to military orders. Both responsible committees of Congress observed that Section 514 was (S. Rep. No. 1558, 77th Cong., 2d Sess., p. 11; H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6) "designed to prevent multiple State taxation of the property and income of military personnel serving within various taxing jurisdictions through no choice of their own." Congress, however, did not restrict the operation of the statute to actual incidents of double

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Automotive Bulletin No. 1, ¶03, C.C.H. N.J. Tax Rep., par. 94–086; Pennsylvania Sales and Use Tax Regulation No. 157, ¶2(d), 2 C.C.H. Pa. Tax Rep., par. 64–157; Va. Atty. Gen. Rep., July 21, 1966, Item 5, C.C.H. Va. Tax Rep., ¶200–109; Wyo. Atty. Gen. Op. p. 52 (1966), C.C.H. Wyo. Tax Rep., ¶200–126. Each of these States, however, have joined in an *amicus* brief which urges the opposing view.

taxation. As this Court held in *Dameron* v. *Brodhead*, 345 U.S. 322, 326:

> Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right.

Then in *California* v. *Buzard*, 382 U.S. 386, 393, the Court, in construing the motor vehicle license fee proviso of Section 514(2)(b), recognized that "The very purpose of § 514 * * * was to relieve * * * [the serviceman] of the burden of supporting the governments of the states where he was present solely in compliance with military orders."

These purposes, of course, require an immunity from ad valorem taxes, since such imposts do pose a threat of double taxation. They are levied annually on the value of all personal property within the taxing jurisdiction on a given day. Because a serviceman might move from one State to another within a single year, he might in one year be present in each of several taxing jurisdictions on tax day. But for the exemption of Section 514, his property might well be subjected to an ad valorem tax in more than one State during the same year.

Sales and use taxation provide a threat of double taxation to at least the same degree. Although the sales tax is imposed only upon the acquisition of property, the use tax is imposed whenever property is brought

into and used within a State after being acquired in another jurisdiction. The very purpose of having a use tax as a complement to sales taxation is to eliminate tax avoidance through the purchase of property in one State for use in another having a higher tax.

In enacting Section 514, Congress was legislating for an army composed for the most part of temporary soldiers—those who at the termination of their service would return to their home States. A serviceman's absence, and the absence of his property from the home State, would have at least exempted him from the ad valorem taxes of his home State for the period of that absence even without Section 514. But upon return he would be subject to a use tax on property acquired during military service and brought home upon discharge. The congressional purpose to confer a broad immunity against double taxation could, therefore, not be fully achieved unless the exemption goes to sales and use taxes as well as to ad valorem levies of States where the serviceman is present solely by reason of his orders.

The propriety of this conclusion is all the more apparent when consideration is given to the relative incidents and importance of sales and use taxes and ad valorem taxes. Each of these taxes is measured by the value of property. The essential distinction between these two types of taxes is that a sale or use tax is imposed only once upon an item, either upon its acquisition or its first use within the jurisdiction. An ad valorem tax, on the other hand, is an annually recurring levy. But this difference should be of little practical significance for purposes of Section 514.

Further, the multiple exemptions and the difficulties of enforcement that have historically attended ad valorem taxes brought such imposts into general disfavor well before the time, in 1942, when Section 514 was added to the Soldiers' and Sailors' Civil Relief Act. "Modern nations have as a result almost universally shunned general property taxation * * *." Buehler, *Personal Property Taxation* 117 (1939). See, also, Hellerstein, *Cases and Materials on State and Local Taxation* 142 (3d ed. 1969.) Indeed, by 1942, a variety of jurisdictions were replacing or supplementing ad valoren personal property taxes with sales and use taxes. Cf. Tax Policy League, *Symposium on Property Taxes* (December 27–29, 1939, Philadelphia, Pennsylvania) pp. 40, 53, 110, 132–133.[9] And, by that time, sales and use taxes apparently had surpassed ad valorem taxes in importance as a source of revenue to State authorities.[10]

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[9] As of 1942, 22 States had a general sales tax, and 18 of these had a complementary use tax. 3 State Taxation of Interstate Commerce, H. Rep. No. 565, 89th Cong., 1st Sess., p. 610.

[10] Although exact statistics do not appear to be available, it is clear that by 1942 sales tax revenues were of considerable significance. One available study was prepared by the Tax Research Department, Commerce Clearing House, Inc., *Tax Systems, A Year Book of Legislative and Statistical Information Including All the States of the United States and Certain Foreign Data* (11th ed., January, 1948) p. 257. It reports that in 1941 State governments had total revenues of $4,450,000,000. $560,000,000, or over 12% of that total, are listed as coming from "general sales and use" taxes, a category that includes some minor taxes in addition to sales and use taxes. See *id.* at p. VI and pp. 9, 12, 34, 70, 102, 104, and 106. See, also, 3 State Taxation of Interstate Commerce, H. Rep. No. 565, 89th Cong., 1st Sess., p. 616, which shows that as of 1940 some

Against this background, a restriction of Section 514 to ad valorem taxes would require the view that Congress only granted nonresident servicemen immunity from a relatively less important tax pertaining to their personal property while allowing them to be subjected to sales and use tax liabilities. Plainly this could not be the case, for the legislative history and the decisions of this Court demonstrate that Congress intended the fullest possible exemption from the threat of double taxation "in respect of * * * personal property".

To adopt the view of the appellants and the *amici curiae* would, in addition, acknowledge that the States and their subdivisions remain free to exact from servicemen major contributions to State revenues, even though Congress, as this Court recognized in *Buzard*, plainly intended to relieve servicemen of that burden

13.8% of State tax collections resulted from sales and use taxation.

For the same year, C.C.H. reports that "property taxes" amounted to just under $200,000,000, or less than 5% of the total of State revenues. This latter figure includes ad valorem taxes on both real property and personal property, but it is believed that the States—as opposed to local governments—receive relatively little revenue from real property taxes.

For 1940 the Bureau of the Census reported local tax collections as being $4,497,000,000, some $4,170,000,000 of which were "property" taxes. See U.S. Bureau of the Census, 1962 Census of Governments, Volume 6, Report No. 4 pp. 45–46. It is believed that most of these collections were real property taxes. See Tax Policy League, *op. cit., supra*, p. 119. (The C.C.H. and Census statistics are not entirely comparable. For example, the C.C.H. report, at p. 257, reports that local tax collections in 1940 totaled $4,800,000,000, somewhat more than the amount reported by the Bureau of the Census.)

except as imposed by their home State. The similarity in functioning between the two types of taxes and their relative importance as revenue-gathering devices would, we submit, require the strongest legislative expression of purpose to grant exemption from one but to allow the other. It is clear, however, that Congress has not evidenced such an intent. As this Court has said (*California* v. *Buzard, supra,* 382 U.S. at 393), "[T]here is no persuasive evidence Congress meant state labels to be conclusive * * *."

2. The reality of the prospect of double sales and use taxation is fully demonstrated by this record. Commander Foster was in fact subjected to double taxation on the automobile he purchased in Connecticut, when Connecticut insisted on the collection of the full Connecticut use tax even though he had also paid the full sales tax required by Texas, his home State, when he registered his new car there. (R. 21A–27A.) [11] Commander Roloff was also taxed twice, al-

[11] Although Connecticut provides a credit where (Section 12–430(5)) "any article of tangible personal property has already been subject to a sales or use tax by any other state * * *.", it apparently construes the credit as not applying to someone in the position of Commander Foster. We therefore presume that the Texas tax was viewed as having been paid at the same time or subsequent to the event that gave rise to the Connecticut tax and, therefore, Commander Foster's car had not "already been subject" to the Texas tax at the time of the Connecticut tax became due.

This example demonstrates the defect in the contention the State of New York advances in its *amicus* brief (at pp. 17–18) that the problem of this case is already resolved by the grant of use tax credit for sales taxes paid in other States. Moreover, *Dameron* v. *Brodhead, supra,* is explicit in holding that only the home State can exercise its taxing power under Sec-

though he was only required to pay the difference between the tax he had paid Florida upon acquisition of his car and the amount he would have paid if he had acquired it in Connecticut.

At the time of trial here, Lieutenant Schuman, Commander Carroll, and Commander Shaffer had only been taxed once on their purchases of boats and a car. However, if the decision below is reversed, each of them remains subject to further taxation on their use of these chattels when they are transferred to other States by military orders. And nothing in Section 514 would bar their respective home States from

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tion 514. Thus, the granting of credits does not conform to the statute's denial of the basic power to tax.

In addition, the varying nature of the credits granted by the several States, ranging from full exemption to no credit at all, demonstrates why the solution of the multiple sales and use tax problem should not be left to the States for present purposes. Of the 44 States and the District of Columbia which have sales and use taxes, only the District of Columbia provides a complete exemption where a sales or use tax has been previously paid. Fifteen States provide a credit against their tax for the amount of sales or use tax paid in another State. Thirteen more States provide such a credit, but only if the State to which the tax was first paid gives a credit to buyers from the taxing State. (However, three of these thirteen States do not tax property first used elsewhere.) Ten additional States provide no credit, but exempt from tax property first used in another State. The other six States provide relief only for property brought into the State by new residents or businesses. See *e.g.*, H. Rep. No. 565, 89th Cong., 1st Sess., pp. 825–829; Hellerstein, *Cases and Materials on State and Local Taxation* (1969 ed.), p. 15; Idaho Code tit. 63, § 3621; Mass. Gen. Laws Ch. 64H § 7(c); Minn. Stat. Ann. (1962) § 297A–24; Rev. Stat. of Nebr. tit. 77, § 2704(4); N.J. Stat. Ann. 32B: § 54.11(b); N.Y. Tax Law § 1118(7)(a); Va. Code § 58–441.8.

taxing these items, when each returns to his respective domicile.

3. Even if this analysis is thought to leave any room for doubt, those doubts must be resolved in favor of the broad view of the exemption which is advanced here. The evolution of Section 514 demonstrates that every time the precise scope of the statute was open to question, Congress chose to broaden its applicability in order to accord to servicemen a wide freedom from State tax burdens, except those imposed by the home State. This fact is reinforced by the view of the responsible Congressional Committees, which stated, at the time of the original enactment in 1942, that "Any doubts that may arise as to the scope and application of * * * [the soldiers' and Sailors' Civil Relief Act] should be resolved in favor of the person in military service involved." S. Rep. No. 1558, 77th Cong., 2d Sess., p. 2; H. Rep. No. 2198, 77th Cong., 2d Sess., p. 2. And in 1944, this legislative purpose was restated by Congress when it amended the statute to make absolutely clear that servicemen were given "the same protections as to personal property taxes that they now have as to income taxes." H. Rep. No. 1514, 78th Cong., 2d Sess., p. 2.

This Court, moreover, when faced with questions regarding the precise limits of Section 514, has broadly construed it so as to confer upon servicemen a wide freedom from tax burdens "sav[ing] the sole right of taxation to [their] state of original residence," *Dameron* v. *Brodhead,* 345 U.S. 322, 326, and ruling that the Act must be read "with an eye

friendly to those who dropped their affairs to answer their country's call", *LeMaistre* v. *Leffers,* 331 U.S. 1, 6; *Boone* v. *Lightner,* 319 U.S. 561, 575. Like the California 2 percent "license fee" involved in *California* v. *Buzard, supra,* the Connecticut sales and use taxes serve to defray the general costs of local government.[12] As this Court unanimously recognized in *Buzard* the purpose of Section 514 (382 U.S. at p. 393) "was to relieve * * * [the serviceman] of the burden of supporting the governments of the states where he was present solely in compliance with military orders." Hence, under the *Buzard* rationale, there is no less compelling reasons for construing Section 514 to relieve servicemen from the 3½ per cent Connecticut sales and use tax than from the 2 percent California "license fee." These expressions provide a definitive refutation to any narrowing construction of Section 514, if servicemen are to have their statutory exemption from local tax burdens in the full sense that Congress intended.[13]

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[12] Section 12-432 of the Connecticut statutes (App. Br. 42B) specifies that all sales and use taxes are to be used for public health, welfare, and education.

[13] There is no foundation for the contentionof the *amici curiae* (Texas Br. 2-3) that Section 514, as an exemption statute, is to be narrowly construed. However valid that canon of construction may generally be, it obviously has no function in the face of the contrary congressional direction applicable here.

The authorities marshalled by appellants (Br. 18) for the proposition that immunities in favor of the federal government must be strictly construed are equally inapposite. Indeed, where this Court has considered federal statutes which confer immunity from State taxation, it has been emphasized that such immunities are not to "be frittered away" by restrictive

III.

THE STATUTORY RULE THAT A SERVICEMAN'S PROPERTY IS DEEMED TO BE LOCATED AT HIS DOMICILE BARS THE APPLICATION OF CONNECTICUT SALES AND USE TAXES

Under the terms of Section 514, personal property belonging to a nonresident serviceman is deemed not to be present, and to be without a situs for taxation, in any State where he is present solely by reason of military orders. Thus for the purposes of any "taxation in respect of * * * personal property," the serviceman's property does not gain a location in the host State by reason of his military service. The rationale of the Act is that but for military orders the property would be and therefore should be treated as though it is in the State of domicile.

This mechanism plainly operates to bar the imposition of a use tax, for such a tax may be imposed only to property that is used—*i.e.*, that is present—within the taxing jurisdiction. Connecticut's use tax, like that of many States, is "imposed on the storage, use or other consumption *in this state* of tangible personal property" (emphasis supplied), and the statute, in Section 12–407(14), defines the italicized words to mean "within the exterior limits of the state of Connecticut." The only possible interpretation of Section 514 in these circumstances is that it strips Connecticut of the jurisdictional basis for the imposition of its

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readings. *Federal Land Bank* v. *Bismarck Co.*, 314 U.S. 95, 99; see, also, *Carson* v. *Roane-Anderson Co.*, 342 U.S. 232, 235–236; *Pittman* v. *Home Owners' Corp.*, 308 U.S. 21, 31; *N.J. Ins. Co.* v. *Div. of Tax Appeals*, 338 U.S. 665, 675.

use tax. We do not understand appellants or the *amici* to argue otherwise.

They nevertheless contend (App. Br. 10–11; Texas amicus Br. 3–4) that the sales tax is a transactional tax, levied on the sales transaction and independent of the location of the property sold, and that therefore the mechanism of Section 514 is insufficient to reach the sales tax. There are two difficulties with this argument. The first is that an analysis of the Connecticut statute shows that the incidence of the tax depends on the situs of the property being in Connecticut, when the buyer receives it. The Connecticut tax is imposed on "the privilege of selling tangible personal property at retail", and the tax is measured at 3½ percent "of the gross receipts of any retailer from the sale of all tangible personal property sold at retail." The meaning of these phrases depends, of course, on the interpretation accorded the words "selling" and "sale". Section 12–407 defines these two critical words, to the extent here pertinent, to:

> mean and include: (a) Any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration; (b) any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate commerce, of tangible personal property from the place where it is located for delivery to a point in this state for the purpose of the transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of the property for a considera-

> tion; * * * (f) a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; * * * [14]

The unifying characteristic of each of the events that may be a sale under this definition is the transfer of possession of the personal property [15] from the seller to the buyer. Whether the imposition of tax results from a transfer of title [16], exchange, barter, or any other of the events described in this definition, there must be a transfer of possession before the sale is completed, and the taxable event occurs. But at the very moment of transfer of possession to a nonresident serviceman, Section 514 operates to require that the event be treated as though the serviceman received the property in his home State.

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[14] A comparable definition of the word "purchase" is found in Section 12–407(7). (App. Br. 4B.)

[15] Subclause (h) of the definition includes "a transfer for a consideration" of the "occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less." No question has heretofore been raised in this case as to the application of Section 514 to this aspect of the Connecticut statute. Appellants assert in their brief (at pp. 9–10) that this part of the Connecticut tax may be collected under Section 514. Whether this is correct depends on whether the right to occupy a hotel or motel is an interest in intangible personal property, which is within the scope of Section 514. Whatever may be the correct resolution of this point, it does not have any relevance to the situations in issue here, where it is clear that tangible personal property is transferred.

[16] See Section 2–401(2) of the Uniform Commercial Code, which states: "[u]nless otherwise explicitly agreed, title passes" when there is "performance with reference to the physical delivery of the goods * * *."

Thus, the transaction is in substance that described in subclause (b) of the definition, which speaks of the "withdrawal" of property from a storage place in Connecticut for purposes of delivery. The statute taxes, however, only those withdrawals intended "for delivery to a point in this State." Any other withdrawal, including any "pursuant to a transaction in foreign or interstate commerce" is outside the definition of "sale" and "selling". Since Section 514 of the Soldiers' and Sailors' Civil Relief Act deems the serviceman's possession to be taken in his home State, the application of Connecticut sales tax statute must be the same tax-free treatment as when the item is delivered from the Connecticut seller to an out-of-state location. Compare *Adams Mfg. Co.* v. *Storen*, 304 U.S. 307; *Gwin, etc., Inc.* v. *Henneford*, 305 U.S. 434; *Freeman* v. *Hewit*, 329 U.S. 249.[17]

But even if Connecticut's statute were not so worded, the same conclusion would hold true and the serviceman's acquisition must be deemed to have oc-

[17] Similar exemptions for interstate sales are found under many other State sales tax statutes. See *e.g.*, Code of Ala. (1958) tit. 51, § 786(4); Ariz. Rev. Stat. Ann. § 42-1321; Colo. Rev. Stat. (1963) § 138-5-14; Massachusetts—Mass. Gen. Laws, ch. 64H, § 6; Va. Code § 58-441.6(r).

curred outside Connecticut. To bifurcate a sales transaction into the acquisition and subsequent possession of the item acquired would be contrary to the policy embodied in Section 514. As this Court stated in *Dameron* v. *Brodhead,* 345 U.S. 322, 326, Congress in Section 514 "saved the sole right of taxation [of servicemen] to the state of [their] original residence." Nothing in the scheme of the statute nor its legislative history suggests that a serviceman is to be immune in his host State from taxes relating to his use of an item of personal property, but not from complementary taxes which relate to his acquisition of such property.[18] Therefore Section 514 must apply to both the sales tax and the compensating use tax.

IV.

THE SUGGESTED DIFFICULTIES OF ADMINISTERING AN EXEMPTION FROM SALES AND USE TAXES ARE NEITHER GERMANE NOR PROVEN

Appellants and two of the *amici curiae* contend that the decision below is inappropriate because, they assert, an exemption from sales and use taxes would be

[18] Appellant's challenge (Br. 24–27)—not made below—to the constitutionality of Section 514 as construed by the Second Circuit is controlled by *Dameron* v. *Brodhead*, *supra*, 345 U.S. at 324–325, where this Court sustained the constitutionality of Section 514 as a congressional exercise of power incident to the powers (United States Constitution, Art. I, Section 8) to declare war and support armed forces. The constitutional question is the same, whether decided in the context of an ad valorem tax, as in *Dameron*, or sales and use taxes, as here.

difficult to administer. We first observe that these claims have at best peripheral relevance to this case. The question here is the construction to be given Section 514 in light of the broad sweep of the Congressional purpose. The supposed difficulties of administering a particular exemption are matters for the Congress, which has enacted the exemption and has the authority to diminish it. Had Congress shown a concern for such difficulities, or in any manner expressed a view that such problems should provide guidance to the interpretation of Section 514, they would no doubt be pertinent considerations. But Congress did not do so and it is clear that the guide to construction must be the expression of legislative purpose to provide servicemen with a broad immunity from income and personal property taxation by jurisdictions that are not their homes.

This is not to say, however, that we believe the charges of administrative difficulty are well taken. Appellants did not voice these claims until oral argument before the court of appeals. That court did (R. 59A):

> not think these problems insurmountable, or even seriously burdensome. In fact, Connecticut has already exempted other groups from its sales and use taxes, and no ill effect from these exemptions has been brought to our attention.

Neither appellants nor any of the *amici* have added anything in this Court to what was said below.

As the court of appeals commented, *supra,* Connecticut already has many exemptions, and this is gen-

erally true of State sales and use tax statutes. Some exemptions are based on the status of the purchaser, such as those granted to charitable, educational and religious organizations [19] or to foreign nationals associated with embassies or consulates.[20] Others depend on the nature of article purchased; for example, Connecticut exempts sales of prescription medicines, newspapers, magazines, food products and the numerous other items from tax. (See Section 12–412, App. Br. 17B–22B.)[21] Yet others depend on the use to which the item will be put, and the grant of the exemption

[19] See, *e.g.*, Conn. Gen. Stat. Ann. tit. 12, § 412(h); Code of Ga. Ann. § 92–3403(a); Ill. Rev. Stat. tit. 120, § 441; Kans. Stat. Ann. tit. 79, § 3606(b); Me. Rev. Stat. Ann., § 36–1760; Mass. Gen. Laws Ch. 64H, § 6(e); N.J. Stat. Ann. § 32B: § 52.9 (b); N.Y. Tax Law, § 1116; Purdon's Penna. Stat. Ann. tit. 72, § 3403–203(e); Rev. Civ. Stat. of Texas (1960) tit. 122A, § 20.04.

[20] See, *e.g.*, Penn. Tax. Reg. 208, Nov. 1, 1965, C.C.H. Penn. Tax Rep. ¶60–260; Texas Tax Rul. #95–0.30, Sept. 18, 1961, C.C.H. Texas Tax Rep. ¶60–204; Op. of Atty. Gen. of La. August 6, 1937, C.C.H. La. Tax Rep. ¶60–204.10; Calif. Sales Tax, Counsel Op., July 21, 1959, C.C.H. Calif. Tax Rep. ¶60–202.39; D.C. Sales Tax Reg. Sec. 704, CCH D.C. Tax Rep. ¶60–206; Opinion of Atty. Gen. of N.Y., CCH N.Y. Tax Rep. ¶40–220.18 (motor fuel tax).

[21] For example, prescription drugs are exempt from sales tax in Maine (Me. Rev. Stat. Ann. § 36–1760) Massachusetts, Gen. Laws Ch. 64H, § 6(l); New Jersey (N.J. Stat. Ann. 354: 32B–8(a)); New York (N.Y. Tax Law, § 1115) and Pennsylvania (Purdon's Penna. Stat. Ann. tit. 72, § 3403–203(m)). Newspapers and magazines are exempt in California (Calif. Rev. and Tax Code § 6362); Kansas (Kan. Stat Ann. tit. 79, § 3606(g)); Massachusetts (Laws of Mass. Ann. Ch. 64H § 36(m)); Pennsylvania (Purdon's Penna. Stat. Ann. tit. 72, § 3403–203(v)). Religious articles are exempt from sales tax in Maine (Me. Rev. Stat. Ann. § 36–1760).

depends entirely on the purchaser's declaration of his purpose.[22]

The problem claimed here is in the alleged difficulty in devising suitable means of identifying servicemen[23] entitled to the exemption and in accounting for tax free sales by retailers. There is, however, no reason to believe that there would be any more difficulty in identifying servicemen entitled to the exemption than

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[22] See, *e.g.*, Conn. Gen. Stat. Ann. tit. 12, § 412(u)(v) (sales of personal property for incorporation into air or water pollution facilities); Calif. Rev. and Tax. Code § 6359.5 (sales of ice to be employed in packing food products for interstate shipment); Va. Code § 58–441.6 and N.Y. Tax Law § 1115(a) ("Tangible personal property purchased for use or consumption directly and exclusively in research and development in the experimental sense"); Okla. Stat. Ann. tit. 68, § 1305(b) (sales of agricultural fertilizer to a person who certifies in writing on a copy of the invoice that the material will be used in his farming business); Calif. Rev. and Tax. Code § 6386 (sales of construction materials to be used on structures attached to real estate outside of California); Mass. Gen. Laws Ch. 64H, § 6(m) (sales of books required for instruction in educational institutions are exempt); Rev. Code of Wash. Ann. § 82.08.030(21) (sales to nonresidents who intend to remove the goods from the State immediately after the purchase, and whose States of residence have sales taxes which are less than the Washington tax); Code of Ga. Ann. § 92–3403(a) (sales of motor vehicles, aircraft and watercraft to nonresidents, if the purchaser intends to use the vehicle outside of Georgia); Ky. Rev. Stat. (1953) § 139.480 (purchases of machinery, when they are for new or expanded productive facilities rather than for the replacement of old facilities).

[23] There is no merit to the suggestion of the *amicus curiae* (Cal.—Ill. Br. 8–9) that the decision below would extend the protections of the Act to servicemen's wives and dependents. The terms of Section 514 are only applicable to the servicemen. Cf. *Christian* v. *Strange*, 96 Ariz. 106, 392 P. 2d 575.

in identifying the many other people, institutions, and sales which are already exempt. It is true in Connecticut,[24] as elsewhere, [25] that various groups entitled to exemptions by reason of their status secure certificates which evidence their rights to decline to pay the tax. It would be a simple matter to have a comparable means of identification for each serviceman, indicating his home State and State of military duty station. For example, we have been advised by the Department of the Navy that all military personnel on active duty in the United States are issued a distinct Department of Defense identification card, which could readily have the necessary information added to it.

In these circumstances, the accounting difficulties would be no greater than those presumably existing at the present time. All retailers in Connecticut and in other States must make provision for accounting for exempt sales and it would be no added burden for the sales clerk, upon presentation of proper identification to treat it in the same manner.

Furthermore, there would be a limited administrative effect to the construction of Section 514 for which

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[24] Section 12–410(1) of the Connecticut statute (App. Br. 13B).

[25] Calif. Rev. and Tax Code, § 6092; Fla. Sales Tax. Rule 318–1.38, C.C.H. Fla. Tax Rep. ¶60–214; Code of Ga. Ann. § 92–3409(a); Ill. Rev. Stat. Ch. 120, § 441; Md. Sales Tax Rule 40(1947), C.C.H. Md. Tax Rep. ¶60–241; Kans. Stat. Ann. tit. 79, § 3602(k); Minn. Stat. Ann. (1962) § 297A.11; Me. Sales Tax Reg. No. 1, C.C.H. Me. Tax Rep. ¶60–206, Mass. Gen. Laws Ch. 64H, § 38; Vernon's Ann. Mo. Stat. § 144.210; N.J. Stat. Ann. 32B: § 54.12; N.Y. Tax Law, § 1132(c); Purdon's Penna. Stat. Ann. tit. 72, § 3403–546; Rev. Civ. Stat. of Texas (1960) tit. 122A, § 20.04; Va. Code § 58–441.17.

we contend here. It has been stipulated that (R. 16A) "[m]ost of the day-to-day purchases of tangible personal property, which includes food, clothing, toilet articles and other personal items, made by servicemen in Connecticut are made from military exchanges, and commissaries operated by the armed services on military installations." Sales at such exchanges and commissaries are already exempt (4 U.S.C. 107(a)) "from * * * the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property"[26] purchased in such a facility. Thus the actual impact would be limited to servicemen's purchases off base, such as the cars exemplified in this record. The transactions should be neither so

[26] Contrary to appellants' suggestion (Br. 16), no inference regarding the congressional purpose underlying Section 514 can be drawn from the Buck Act (4 U.S.C. 105 *et seq.*), which allows imposition, under limited circumstances, of certain State taxes in federal enclaves. The two statutes are the product of different Congresses, the Buck Act having been enacted in 1940, two years before Section 514 was added to the Soldiers' and Sailors' Civil Relief Act and four years before Section 514 was amended to deal expressly with personal property. Moreover, the design of the two provisions is markedly different. Since Congress did not intend by the Buck Act to retrocede to the States general taxing jurisdiction in federal enclaves, it necessarily made express reference to sales and use taxes and to income taxes—the only taxation which it intended to permit. See H. Rep. No. 1267, 76th Cong., 1st Sess., pp. 1–3; S. Rep. No. 1625, 75th Cong., 3d Sess., pp. 2–5. If the Buck Act is at all relevant here, it is for the provision just quoted in the text, which shows that Congres refused to retrocede jurisdiction to impose sales and use taxes on servicemen. It is doubtful that Congress would have intended to deny an exemption from sales and use taxes in Section 514 while granting such exemption to purchases made at military exchanges and commissaries.

many in number nor so large in tax consequences as is predicted.[27]

PART TWO

The foregoing argument has been prepared by officers of the Department of Justice who support it. This is presented (1) in order that the Court may have the benefit of a full professional argument on both sides of the questions involved, and (2) in fairness to the two courts below, to which arguments of this tenor were successfully presented.

The Solicitor General and the Assistant Attorney General in charge of the Tax Division in the Department of Justice—while having no question as to the competence and appropriateness of the arguments presented in the preceding pages—are not persuaded by these arguments. They do not undertake to set

[27] This case does not present the questions raised by appellants (Br. 23) and two *amici* (Cal.-Ill. Br. 8–9) regarding the application of Section 514 to servicemen on furlough. By no means, however, does it follow from the position we urge here that a serviceman would be exempt from sales and use taxation while travelling on furlough in a State that is neither his home nor his duty station. The application of Section 514 is restricted to persons absent from his home State "solely * * * in compliance with military or naval orders". Although an order granting furlough may restrict the serviceman to a certain area, it does not require him to go to any particular jurisdiction in the same sense as do orders sending him to a duty station. It may well be that while on furlough he is not present in a jurisdiction other than his home or duty station "solely" by reason of the order granting him the furlough. At all events, even if the exemption is held to apply to a serviceman on furlough, there would be no significant administrative difficulties that could not be resolved in the manner we have described above.

forth fully the arguments in support of the power of the States to impose sales and use taxes, since those are presented by the appellants and the *amici*, but they do submit the following observations for consideration.

The general orientation of Section 514, which is cast largely in terms of domicile, shows that it was intended to apply to taxes which are, or were thought to be, based largely on domicile. These taxes are the income tax, and annually recurring taxes on personal property. The field of property taxation was one in which the maxim *mobilia sequuntur personam* long held sway, and the patent objective of the statute was that a serviceman should not be found to have acquired a domicile in a State for purposes of that State's taxation when he was living in the State solely because of military orders.

That the focus of the statute was on the income tax and on annually recurring taxes on personal property, and related taxes, is evident from the wording of Section 514. It is also supported by the fact that Congress passed another statute dealing with sales and use taxes. This is the so-called Buck Act, Act of October 9, 1940, c. 787, 54 Stat. 1059, now codified as 4 U.S.C. 105–110. Under this provision, servicemen are exempt from sales and use taxes with respect to sales made to servicemen at commissaries, ships' stores, or post exchanges. If it had been contemplated that servicemen were generally exempt from all State sales and use taxes, the provisions of the Buck Act would not have been necessary as far as such taxes

are concerned. Even as applied to servicemen in their own home State, it would probably have been worded differently.

Moreover, it has been generally understood that Section 514 did not apply to State sales and use taxes. This has been the practical administration in most States for more than a quarter of a century, until the present suit was started. That this was this Court's early understanding of the purpose and effect of the Act is shown in the early decision under Section 514, *Dameron* v. *Brodhead*, 345 U.S. 322, where the Court referred to Section 514 as "freeing servicemen from both income and property taxes * * *" 345 U.S. at 326.[28] Similarly, in the most recent decision of this Court under Section 514, that provision is described as providing "a non-resident serviceman present in a state in compliance with military orders with a broad immunity from that state's personal property and income taxation." *California* v. *Buzard*, 382 U.S. 386, 387.

It is true that Section 514, as amended, contains the word "use" at three places in connection with the taxes to which it applies. (1) It is provided that "this section applies with respect to personal property, or the use thereof, within any tax jurisdiction * * *" (2) The section also contains a definition under which

[28] In the Government's brief in the *Dameron* case, Section 514 is described as providing that "no state other than the state of domicile shall impose a tax upon his personal property or income." Brief for the petitioner (filed by the Solicitor General) in *Dameron* v. *Brodhead*, No. 302, October Term, 1952, p. 8.

"the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof." The context seems to suggest, though, that the word "use" here was intended to make the exemption applicable to annually recurring motor vehicle taxes, which, in some States, are imposed as personal property taxes, and in others are formulated as taxes on the "use" of motor vehicles on the highways, or in the State, for the period for which the tax is imposed. Such a construction would give adequate scope for the word "use" as it appears in Section 514, as amended, while keeping that provision in harmony with the Buck Act, specifically relating to sales and use taxes. Finally, (3) the amendment which was made to Section 514 in 1962,[29] provides that the Section is applicable "with respect to personal property, or the use thereof." The effect of this amendment, was to make the Section applicable to personal property in the State owned by a nondomiciled serviceman, even though he is serving elsewhere under orders. The provision is consistent with the other situations where the word "use" appears in the statute, and does not evidence any intention on the part of Congress to extend the statutory exemption beyond the income tax and the personal property tax, including annually recurring taxes on the use of motor vehicles in the State, or on the highways of the State.

State sales and use taxes rarely involve any question of double taxation, and thus were outside the

[29] Act of October 9, 1962, P.L. 87-771, 76 Stat. 768; applied in *United States* v. *Arlington County*, 326 F. 2d 929 (C.A. 4).

basic purpose which Congress had in mind when it enacted Section 514. With respect to the use tax, there is almost always a credit for sales tax previously paid to another state, so that there is no doubling up of tax liabilities. It is true that there is one situation disclosed in the present record, where a serviceman encountered a double tax—where Commander Foster, domiciled in Texas, purchased an automobile in Connecticut. He was subjected to a Connecticut sales tax, and could have registered the car there. However, when he sought to register the car in Texas, he found that he could not do so without paying sales or use tax to Texas, without credit for the Connecticut sales tax (R. 21A–27A.) The difficulty here, though, would seem to lie in the provisions of the Texas statute with respect to credit for sales tax paid in another State, and that question—if it presents a legal problem—should be attacked directly. It is not a basis for striking down the Connecticut sales and use tax generally, particularly under this statute. Indeed, since the possibility of double tax is exceedingly remote, there is no reason why a non-domiciled service man should not pay a sales tax in Connecticut which is not equally applicable to a serviceman who is domiciled in Connecticut. Yet Congress obviously did not seek to eliminate State sales taxes generally as applied to servicemen, when it enacted Section 514.

The practical problems involved if the judgment below is sustained seem to be in fact far more formidable than is recognized in the argument presented in Part I. It is one thing to provide an exemption from sales tax for a particular type of commodity—

such as food, or medicine—for all purchasers. That involves some problems of definition, but the rules are the same for all purchasers. It is somewhat more difficult to provide exemption for certain types of institutional purchasers—such as schools or churches. But it is obvious that it would be extremely difficult for the States, and for retailers, to administer a system under which some individuals would be exempt from tax on purchases of any type of article, but only on purchases which they make for themselves—not for their wives and children—and only if they are in the State under orders, not being themselves domiciled there, and not on leave. The opportunities for abuse and for benefits to friends, with or without a price, are readily apparent. There does not appear to be anything in Section 514 which is sufficient to establish that Congress intended that the States would have to deal with such a problem.

Under Section 514, the exemption from income tax when a serviceman lives in a State away from his home under military orders is clear, is understandable, and is readily complied with. Similarly, the exemption from the annually recurring tax on personal property, including related taxes on motor vehicles which are imposed on an annual basis, though the tax is in terms for the "use" of the motor vehicle in the State or on the highways of the state for a period, is likewise established and readily complied with. See *California* v. *Buzard, supra.* These make the statute enacted by Congress fully effective. In the view of the Solicitor General and the Assistant Attor-

ney General, it is neither necessary nor appropriate to push the statute beyond so as to make it applicable to the ordinary retail sales tax, and the concomitant use tax, now imposed by most of the States.

Respectfully submitted.

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